

### **REMARKS**

The Office Action mailed 11 September 2007 has been received and reviewed. Each of claims 1-21, 23-54, 56-66, 80-120, and 135-148 stands rejected. Claims 1, 34, 80, 93, 107, and 135 are amended and claims 17-18, 32-33, 50-51, 63, 85-86, 90, 99, 103, 111-112, 137-143, and 145 are canceled. Reconsideration of the present application in view of the following remarks and above amendments is respectfully requested.

#### **Substance of Interview**

The following remarks are filed in response to the Interview Summary mailed 23 November 2007.

Applicant thanks examiner Avellino for granting the interview on 19 November 2007 and for considering the proposed amendments to independent claims (1 and 135) and the arguments regarding the use of "Official Notice" and the deficiencies of the prior art, including Buxton, Kim, and Nomura. During the interview, the examiner indicated that further consideration of the proposed amendment is required.

#### **Rejections based on 35 U.S.C. § 103(a)**

##### **A.) Applicable Authority**

Title 35 U.S.C. § 103(a) declares, a patent shall not issue when "the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains." The Supreme Court in *Graham v. John Deere* counseled that an obviousness determination is made by identifying: the scope and content of the prior art; the level of ordinary skill in the prior art; the differences between the claimed invention and prior art references; and secondary considerations. *Graham v. John Deere*

*Co.*, 383 U.S. 1 (1966). To support a finding of obviousness, the initial burden is on the Office to apply the framework outlined in *Graham* and to provide some reason, or suggestions or motivations found either in the prior art references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the prior art reference or to combine prior art reference teachings to produce the claimed invention. See *Application of Bergel*, 292 F. 2d 955, 956-957 (CCPA 1961). Recently, the Supreme Court elaborated, at pages 13-14 of the *KSR* opinion, it will be necessary for [the Office] to look at interrelated teachings of multiple [prior art references]; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by [one of] ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the [patent application].” *KSR v. Teleflex*, No. 04-1350, 550 U.S. \_\_\_\_ (2007).

A.) Obviousness Rejections Based on U.S. Patent Publication No. 2003/0204856 (Buxton) in view of U.S. Patent Publication No. 2002/0129375 (“Kim”) and U.S. Patent No. 7,254,622 (“Nomura”).

Claims 1-21, 25-54, 58-66, and 80-92 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Buxton in view of Kim and Nomura.

Independent claims 1, 34, and 80 are amended to overcome this rejection and to place the application in condition for allowance.

Independent claim 1 is currently amended to include, among other things, “a collection engine, the collection engine configured to receive distributable content from at least one content provider based on a predetermined schedule and a usage demand for the distributable content via a first network and to process subscriber requests for the distributable content, wherein the distributable content is configured to expire after a predetermined time . . . and an

interface to a second network communicating with a subscriber, the subscriber selectively receiving the distributable content at a viewing device from the collection storage at scheduled times via the second network based on each subscriber request corresponding to the subscriber, wherein each subscriber that requested the distributable content is billed for transmission over the first network but not for transmission over the second network.” Applicant respectfully submits that the prior art, including Buxton, Kim, and Nomura, fails to teach or suggest all elements of claims amended independent claim 1.

Unlike Buxton, Kim, and Nomura, alone and in combination, the invention of amended independent claim 1 requires, among other things, a collection engine configured to receive distributable content from at least one content provider based on a predetermined schedule and a usage demand for the distributable content via a first network and an interface to a second network communicating with a subscriber that selectively receives the distributable content at a viewing device, where the subscriber is billed for transmission over the first network but not for transmission over the second network. Applicant respectfully submits, Buxton, Kim, and Nomura fail to teach or suggest the invention of amended independent claim 1. Accordingly, for at least the above reason, Applicant respectfully requests withdrawal of the 35 U.S.C. § 103(a) rejection and allowance of independent claim 1.

Dependent claims 2-16, 19-21, and 23-31 further define novel features of the invention of amended independent claim 1 and each depend, either directly or indirectly, from amended independent claim 1. Accordingly, for at least the reasons set forth above with respect to amended independent claim 1, dependent claims 2-16, 19-21, and 23-31 are believed to be in condition for allowance by virtue of their dependency. See 37 C.F.R. 1.75(c). As such,

Applicant respectfully requests withdrawal of the 35 U.S.C. § 103(a) rejection and allowance of dependent claims 2-16, 19-21, and 23-31.

Independent claim 34 is currently amended to include, among other things, “selectively communicating via a second network the distributable content, wherein the distributable content is configured to expire after a predetermined time, from the content storage to a viewing device associated with a subscriber that receives the distributable content at scheduled times on a pay-per-use basis; and storing the distributable content on a local storage of the viewing device.” Applicant respectfully submits that the prior art, including Buxton, Kim, and Nomura, fail to teach or suggest all elements of amended independent claim 34.

Unlike Buxton, Kim, and Nomura, alone and in combination, independent claim 34 requires at least two networks that the distributable content traverses and a viewing device to receive distributable content for the subscriber at scheduled times on a pay-per-use basis. The distributable content is stored on the local storage for the viewing device for viewing or reproduction by the subscriber. Applicant respectfully submits, Buxton, Kim, and Nomura fail to teach or suggest the invention of amended independent claim 34. Accordingly, for at least the above reason, Applicant respectfully request withdrawal of the 35 U.S.C. § 103(a) rejection and allowance of amended independent claim 34.

Dependent claims 35-49, 52-55, 56-62, and 64-66 further define novel features of the invention of amended independent claim 34 and each depend, either directly or indirectly, from amended independent claim 34. Accordingly, for at least the reasons set forth above with respect to amended independent claim 34, dependent claims 35-49, 52-55, 56-62, and 64-66 are believed to be in condition for allowance by virtue of their dependency. See 37 C.F.R. 1.75(c).

As such, Applicant respectfully requests withdrawal of the 35 U.S.C. § 103(a) rejection and allowance of dependent claims 35-49, 52-55, 56-62, and 64-66.

Independent claim 80 is currently amended to include, among other things, “selectively communicating via a second network the distributable content, wherein the distributable content is configured to expire after a predetermined time, from the content storage to a viewing device of a subscriber that receives the distributable content at scheduled times; and activating viewing of the distributable content at the viewing device by a key mechanism. Applicant respectfully submits that the prior art, including Buxton, Kim, and Nomura, fails to teach or suggest all elements of amended independent claim 80.

Unlike Buxton, Kim, and Nomura, alone and in combination, independent claim 80 requires at least two networks that the distributable content traverses and a viewing device to receive distributable content for the subscriber at scheduled times. The distributable content is viewed on the viewing device when a key mechanism for the viewing device processes a valid key. Applicant respectfully submits, Buxton, Kim, and Nomura fail to teach or suggest the invention of amended independent claim 80. Accordingly, for at least the above reason, Applicant respectfully request withdrawal of the 35 U.S.C. § 103(a) rejection and allowance of amended independent claim 80.

Dependent claims 81-84, 87-89, and 91-92 further define novel features of the invention of amended independent claim 80 and each depend, either directly or indirectly, from amended independent claim 80. Accordingly, for at least the reasons set forth above with respect to amended independent claim 80, dependent claims 81-84, 87-89, and 91-92 are believed to be in condition for allowance by virtue of their dependency. See 37 C.F.R. 1.75(c). As such,

Applicant respectfully requests withdrawal of the 35 U.S.C. § 103(a) rejection and allowance of dependent claims 81-84, 87-89, and 91-92.

C.) Obviousness Rejections Based on Buxton, Kim, Nomura and U.S. Patent Publication No. 2004/0010717 ("Simec").

Claims 23-24 and 56-57 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Buxton, Kim, Nomura, and Simec. As the asserted references, whether taken alone or in combination, fail to teach or suggest all the limitations of the rejected claims, Applicant respectfully traverses the rejection as hereinafter set forth.

Claims 23, 24, 56, and 57 depend from amended independent claims 1 and 34. As discussed above, Buxton, Kim, and Nomura fail to teach or suggest all the limitations of amended independent claims 1 and 34. Accordingly, claims 23, 24, 56, and 57 are patentable over Buxton for at least the above-cited reasons. The addition of Simec fails to cure the deficiencies of Buxton, Kim, and Nomura with respect to the limitations of amended independent claims 1 and 34. As such, Applicant respectfully requests withdrawal of the 35 U.S.C. § 103(a) rejection and allowance of dependent claims 23, 24, 56, and 57.

D.) Obviousness Rejections Based on Buxton, Kim, Nomura, and U.S. Patent No. 7,155,674 ("Breen").

Claims 93-99, 102-113, 116-120, 135-141, and 144-148 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Buxton, Kim, Nomura, and Breen.

Independent claims 93, 107, and 135 are amended to overcome this rejection and to place the application in condition for allowance.

Independent claims 93 is currently amended to include, among other things, "a content storage interface communicatively connected to a network communicating with a content

storage device, the content storage device storing distributable content received from at least one content provider for transmission to a subscriber in a subscriber group, wherein the distributable content is configured to expire after a predetermined-number of uses; and a receiver interface communicatively connected to a viewing device having a local storage to store the distributable content, the viewing device is configured to generate a user interface that permits the subscriber to selectively receive the distributable content on a pay-per-use basis and to reproduce a viewable version of the received distributable content, wherein the user interface provides a list of distributable content that is dynamically updated to include popular distributable content based on a number of requests of the popular distributable content received from subscribers in the subscriber group.” Applicant respectfully submits that the prior art, including Buxton, Kim, Nomura, and Breen fails to teach or suggest all elements of amended independent claim 93.

Unlike Buxton, Kim, Nomura, and Breen, the invention of amended independent claim 93 requires distributable content that is configured to expire after a predetermined number of uses and a viewing device that receives and stores distributable content on a pay-per-use basis. Buxton, Kim, Nomura, and Breen, alone and in combination fail to teach or suggests the amended elements of independent claim 93. Accordingly, for at least the above reason, Applicant respectfully requests withdrawal of the 35 U.S.C. § 103(a) rejection of amended independent claim 93.

Dependent claims 94-98, 100-102, and 104-106 further define novel features of the invention of amended independent claims 93, and each depend, either directly or indirectly, from amended independent claims 93. Accordingly, for at least the reasons set forth above with respect to amended independent claim 93, dependent claims 94-98, 100-102, and 104-106 are believed to be in condition for allowance by virtue of their dependency. See 37 C.F.R. 1.75(c).

As such, Applicant respectfully requests withdrawal of the 35 U.S.C. § 103(a) rejection of dependent claims 94-98, 100-102, and 104-106.

Independent claim 107 is currently amended to include, among other things, “executing a viewing authorization module to process a key for viewing of the distributable content; and generating an output of the distributable content to view on a viewing device, when the key is validated.” Applicant respectfully submits that the prior art, including Buxton, Kim, Nomura, and Breen fails to disclose all elements of amended independent claim 107.

Unlike Buxton, Kim, Nomura, and Breen, the invention of amended independent claim 107 requires a viewing device that receives and stores distributable content and processes a key for validity prior to generating an output of the distributable content. Buxton, Kim, Nomura, and Breen, alone and in combination, fail to teach or suggests the amended elements of independent claim 107. Accordingly, for at least the above reason, Applicant respectfully requests withdrawal of the 35 U.S.C. § 103(a) rejection of amended independent claim 107.

Dependent claims 108-110 and 113-120 define novel features of the invention of amended independent claim 107, and each depend, either directly or indirectly, from amended independent claims 107. Accordingly, for at least the reasons set forth above with respect to amended independent claim 107, dependent claims 108-110 and 113-120 are believed to be in condition for allowance by virtue of their dependency. See 37 C.F.R. 1.75(c). As such, Applicant respectfully requests withdrawal of the 35 U.S.C. § 103(a) rejection of dependent claims 108-110 and 113-120.

Independent claim 135 is currently amended to include, among other things, “connecting to a network communicating with content storage, the content storage storing distributable content received from at least one content provider for transmission to a subscriber,



wherein the distributable content is configured to expire after a predetermined-number of uses; presenting a user interface to permit the subscriber to selectively receive the distributable content, wherein the user interface provides a list of distributable content that is dynamically updated to include popular distributable content based on a number of requests of the popular distributable content received from subscribers in the subscriber group, presents selectable options to permit the subscriber to choose to receive the distributable content at selected times on a pay-per-uses basis, presents selectable options to permit the subscriber to choose to receive the distributable content as a background task, and presents a security dialog to receive a key to authorize the subscriber to view the distributable content; and generating an output of the distributable content to view on a viewing device having a locale storage to store the distributable content, wherein reproduction of the distributable content stored in local storage is controlled by a digital rights module.” Applicant respectfully submits that the prior art, including Buxton, Kim, Nomura, and Breen fails to teach or suggest all elements of amended independent claim 135.

Unlike Buxton, Kim, Nomura, and Breen, the invention of amended independent claim 135 requires distributable content that expires after a predetermined number of uses and a viewing device that generates a user interface to present options to obtain distributable content at selected times on a pay-per uses basis, to present options to receive the distributable content as a background task, and to present a security dialog to view the distributable content. Also, the viewing device includes a local storage to store the distributable content and to control reproduction of distributable content on the local storage. Buxton, Kim, Nomura, and Breen, alone and in combination, fail to teach or suggests the amended elements of independent claim

135. Accordingly, for at least the above reason, Applicant respectfully request withdrawal of the 35 U.S.C. § 103(a) rejection of amended independent claim 135.

Dependent claims 144 and 146-148 define novel features of the invention of amended independent claims 135, and each depend, either directly or indirectly, from amended independent claim 135. Accordingly, for at least the reasons set forth above with respect to amended independent claim 135, dependent claims 144 and 146-148 are believed to be in condition for allowance by virtue of their dependency. See 37 C.F.R. 1.75(c). As such, Applicant respectfully requests withdrawal of the 35 U.S.C. § 103(a) rejection of dependent claims 144 and 146-148.

E.) Obviousness Rejections Based on Buxton, Breen, and Simec.

Claims 100-101, 114-115 and 142-143 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Buxton, Breen, and Simec. As the asserted references, whether taken alone or in combination, fail to teach or suggest all the limitations of the rejected claims, Applicant respectfully traverses the rejection as hereinafter set forth.

Applicant respectfully request clarification of this rejection. Applicant respectfully notes that dependent claims 100-101, 114-115, and 142-143 are rejected using fewer references than the independent claims 95, 107, and 135, which are the claim that claims 100-101, 114-115, and 142-143 depend from.

Claims 142-143 are canceled. Claims 100 and 101 depend from independent claim 93, and claims 114 and 115 depend from independent claim 107. As discussed above, Buxton and Breen fail to teach or suggest all the limitations of amended independent claims 93 and 107. Accordingly, claims 100, 101, 114, and 115 are patentable over Buxton and Breen for at least the above-cited reasons. The addition of Simec fails to cure the deficiencies of Buxton

and Breen with respect to the limitations of claims 93 and 107. As such, Applicant respectfully requests withdrawal of the 35 U.S.C. § 103(a) rejection of dependent claims 100, 101, 114, and 115 respectfully requested.

### **Official Notice**

The Office alleges that assertions of Official Notice without an affidavit or any other form evidence are established as admitted prior art for the rest of the prosecution of this application because a “seasonable challenge” of the assertions were not made. Non-Final Office Action mailed 11 September 2007 at p. 15. *In re Chevenard* found that a statement that was not challenged before the Patent Office may have been challenged under the rules of the Patent Office. *In re Chevenard*, 139 F.2d 711 60 U.S.P.Q. (BNA) 239 (C.C.P.A. 1943). There, the Court noted that a challenge may have required an affidavit of the examiner supporting such statement. *Id.*

Contrary to the Office’s assertions, the *Chevenard* court does not announce or endorse a time limitation for challenging the Office’s assertion of Official Notice. The Office’s citation to *Chevenard* does not support a requirement for a “seasonable challenge.” Moreover, the patent rules, i.e., 37 C.F.R. 1.04(d)(2), does not impose a time limit for challenging the Office’s assertion of Official Notice during prosecution of a patent application. Here, the relevant case law and relevant rules do not place a time limit for challenging the Office’s use of Official Notice.

Applicant hereby challenges the Office’s statements of Official Notice with respect to claims 2, 3, 9, and 10-13.

At the time of Applicant’s invention of claim 2, it was not well-known in the art that distributable content configured to expire was communicated to a collection engine from a

content provider across the Internet in response to a subscriber's request. Instead, content distributed across the Internet was sent directly to the subscriber and was not configured to expire or was not communicate to a collection engine.

At the time of Applicant's invention of claim 3, it was not well-known in the art that distributable content configured to expire was communicated to a collection engine at a digital subscriber line access multiplexer from a content provider across a first network in response to a subscriber's request. Instead, content distributed across the first network in response to subscriber request was sent directly to the subscriber and was not configured to expire.

At the time of Applicant's invention of claim 9, it was not well-known in the art that distributable content configured to expire was transmitted from a content storage over a local wireless interface to a subscriber. Instead, content distributed across the network in response to subscriber request was sent directly to the subscriber without traversing a local wireless network.

At the time of Applicant's invention of claims 10-13, it was not well-known in the art that distributable content configured to expire was communicated to a collection engine at a central telephone office or optical head end from a content provider across a first network in response to a subscriber's request. Further it was not well known to further distribute the content over the second network. Instead, content distributed across the first network in response to subscriber request was sent directly to the subscriber from the content provider and was not communicated to the subscriber over a second network.

Because Applicant traverses each statement Official Notice, Applicant requests other evidence to support the Office's assertion of Official Notice.

### **CONCLUSION**

For at least the reasons stated above, the pending claims are now in condition for allowance. Applicant respectfully requests withdrawal of the pending rejections and allowance of the claims. If any issues remain that would prevent issuance of this application, the Examiner is urged to contact the undersigned to resolve the same. It is believed that no fee is due, however, the Commissioner is hereby authorized to charge any amount required to Deposit Account No. 19-2112.

Respectfully submitted,

Date: 10 December 2007.

/MONPLAISIR HAMILTON/

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Monplaisir Hamilton  
Reg. No. 54851

SHOOK, HARDY & BACON L.L.P.  
2555 Grand Blvd.  
Kansas City, MO 64108-2613  
816-474-6550